J. W. McTIERNAN

IBLA 85-29 Decided May 28, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting a high bid at a competitive oil and gas lease sale. ES-33061.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The rejection of the high bid for an oil and gas lease offered at a competitive lease sale will be affirmed where the administrative record shows that the much higher value of the parcel set by BLM was the product of careful and reasoned analysis, and appellant neither demonstrates error in BLM's appraisal nor establishes that his bid accurately reflects the actual fair market value.

APPEARANCES: J. W. McTiernan, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On December 15, 1983, the Eastern States Office of the Bureau of Land Management (BLM) conducted a competitive sale of certain oil and gas leases. J. W. McTiernan offered the higher of the two bonus bids made for parcel 12, a tract of 393.98 acres of federally acquired land in the Manistee National Forest, Newaygo County, Michigan, within the known geologic structure of the Goodwell-Norwich Field. McTiernan's bid was $2,363.88, or $6 per acre (rounded). The lower bid was $2,000.

By its decision dated March 30, 1984, BLM rejected McTiernan's high bid on the conclusory determination that the bid "did not meet or exceed [BLM's] pre-sale evaluation," whereupon McTiernan filed a notice of appeal to this Board, followed by a timely filed statement of reasons for appeal. While the appeal was pending, and before it had been reached for adjudication in its regular docket order, BLM moved the Board to remand the case to it so that a new decision might be written and McTiernan could be provided with BLM's rationale for its determination. This request represented an apparent effort by BLM to comply with earlier holdings by this Board that rejected high bidders in such cases must be provided with BLM's valuation of the parcel and given sufficient factual data to enable them to make an informed appeal, and that the record must be documented to reflect the basis for BLM's action so that this Board is enabled to review the method and data upon which BLM

relied in making its decision. See, e.g., Larry White, 81 IBLA 19 (1984). Accordingly, BLM's motion was granted, and by our order of June 5, 1984, the case was remanded to BLM for further adjudication.

By its decision of August 17, 1984, BLM again rejected McTiernan's high bid for parcel 12. That decision was transmitted to McTiernan together with BLM's complete report of its appraisal of the fair market value of the parcel. McTiernan again appealed.

In his statement of reasons filed in his first appeal McTiernan had said,

> It is difficult and very counterproductive for Minerals Management to equate their awarding of leases to a poker game where the "house" asks you what cards you have and when you show them, i.e., your highest bid, the "house" says "you lose, not good enough," and the house never has to show its hand.

This Board agrees, and has held repeatedly that such a procedure is improper, consistently stressing the need for BLM to justify its determination of the minimum acceptable bid. See, e.g., Suzanne Walsh, 83 IBLA 187 (1984); Kevin J. Bliss, 82 IBLA 31 (1984); Southern Union Exploration Co., 41 IBLA 81 (1979); Arkla Exploration Co., 22 IBLA 92 (1975).

However, in the instant case that deficiency was rectified by BLM on its own motion. BLM's second decision and the appraisal report provided McTiernan with every detail, factor, and consideration upon which the BLM evaluation was based.

Nevertheless, upon the filing of the second appeal McTiernan merely resubmitted the same statement of reasons he had filed in his first appeal, before he was provided with the BLM appraisal. That was not procedurally improper, but it is deficient on the substantive level. It is an appellant's burden to show error in the decision appealed from. McTiernan attempts to do this by criticizing BLM's methodology in general terms, as well as the Departmental policy and management of the leasing program (comparing the Federal leasing program unfavorably with that of several State leasing programs) and by taking issue with the Department's identification of where the "public interest" lies. He asserts that the bonus bids offered constitute the best determination of the value of a parcel, noting that his bid was 20 percent higher than the only other bid for this parcel. In principal part, McTiernan's arguments are directed against the conceptual theory and consequences of the Government's management and objectives in its conduct of the competitive leasing system. While these arguments are very well expressed and present a comprehensive statement of appellant's concerns, they amount to nothing more than a differing point of view.

In Viking Resources Corp., 80 IBLA 245, 247 (1984), we said:

> In several decisions we have stressed the need for BLM to justify its determination of minimum acceptable bid. For example, in Southern Union Exploration Co., 51 IBLA 89, 92 (1982),

> we indicated that such an explanation was necessary to provide the bidder with "some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board." Nevertheless, these rulings do not absolve appellant of its affirmative obligation of establishing a basis for a determination that there was error in the decision appealed from, i.e., that appellant's bid represents the fair market value. We note that appellant did not rely on BLM's justification when formulating its bid, and therefore appellant should be able to provide justification for the reasonableness of its own bid. 4/ [Footnote omitted.]
>
> In this case, appellant has failed to present evidence that would affirmatively show that BLM's determination of the minimum acceptable bid was in error. * * *
>
> [2] The Department is entitled to rely on the reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. L. B. Blake, 67 IBLA 103 (1982). Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advise of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981). "Inevitably, some bid rejection decisions involve close calls." Id. This appeal, however, does not involve a "close call." Appellant has provided absolutely no support for the conclusion that its bid is a reasonable reflection of fair market value.

So it is in the instant case. Appellant does not even allude to the BLM appraisal report, nor does he provide support for his conclusion that his bid is representative of the fair market value of the parcel. Nor does this appeal involve anything approaching a "close call." The BLM pre-sale evaluation set the fair market value minimum acceptable bid at $60 per acre; appellant's bid was $6 per acre.

We have independently reviewed the BLM appraisal and found it to be a careful, thorough, and analytical effort. No errors were identified.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge